

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TENNESSEE**

FUSION ELITE ALL STARS, et al.,

Plaintiffs,

v.

VARSITY BRANDS, LLC, et al.,

Defendants.

Case No. 2:20-cv-02600-SHL-cgc

JURY TRIAL DEMANDED

**PLAINTIFFS' MOTION FOR LEAVE TO FILE REPLY MEMORANDUM IN
SUPPORT OF MOTION TO COMPEL DISCOVERY RESPONSES FROM
DEFENDANTS VARSITY BRANDS, LLC, VARSITY SPIRIT, LLC, AND VARSITY
SPIRIT FASHION & SUPPLIES, LLC**

Plaintiffs Fusion Elite All Stars, Spirit Factor LLC d/b/a Fuel Athletics, Stars and Stripes Gymnastics Academy Inc. d/b/a Stars and Stripes Kids Activity Center, Kathryn Anne Radek, Lauren Hayes, and Janine Cherasaro (collectively, "Plaintiffs") respectfully move the Court, pursuant to Local Rule 7.2(c), for leave to file a Reply in support of their Motion to Compel Discovery Responses (the "Motion") (Dkt. 105) from Defendants Varsity Brands, LLC, Varsity Spirit, LLC, and Varsity Spirit Fashion & Supplies, LLC (collectively, "Varsity"). In support thereof, Plaintiffs state as follows:

1. On May 5, 2021, Plaintiffs filed their Motion, which included a memorandum in support.
2. On May 19, 2021, Varsity submitted its Response in Opposition to Plaintiffs' Motion (the "Response") (Dkt. 111).
3. Varsity's Response raises several issues that require reply. First, Varsity makes an accusation that Plaintiffs failed to substantiate the claim that "their experts 'may not have sufficient data for the pre-damages period to do a proper analysis of impact and damages' . . . with any

factual support, for example a declaration from an expert explaining why and how such data would be necessary.” *Id.* at 6 (quoting Motion at 8). Plaintiffs deserve an opportunity to respond to this accusation with the requested declaration, which they have appended to their filing. Varsity’s Response also includes material omissions regarding the parties’ discussions of compromises during their meet and confers on the transactional data issue. In addition, Varsity’s Response contains a statement that has the potential to mislead the Court regarding Plaintiffs’ damage period and the reason why Plaintiffs are seeking this additional data, omissions regarding the connection between the Apparel and Competition Markets, and a misleading statement regarding how far back in time Varsity’s transactional data is available. Plaintiffs deserve an opportunity to respond to these statements and omissions, as set forth in their appended Reply and declaration of counsel.

4. Varsity’s Response also includes misstatements or misunderstandings about Requests Nos. 20, 56, 62, 77, 78, 82 and 92 to 103. Namely, Varsity raises a completely new argument regarding Plaintiffs’ request for production of event-specific profit-and-loss statements in response to Request No. 20. Varsity also incorrectly describes Plaintiffs’ position on and support for production of the material Plaintiffs seek in response to Request No. 56. Varsity creates confusion regarding Plaintiffs’ Request No. 62 and proposes a new solution that is entirely unworkable. Varsity’s Response contains a material omission regarding its post-2015 USASF salary information, with respect to Request No. 82. Varsity misrepresents that the parties reached agreement on production in response to Requests Nos. 77 and 78 and deferral of Requests Nos. 92 to 103. Finally, Varsity’s response makes the misstatement that the two additional custodians whose files Plaintiffs seek are duplicative of other custodians’ files. Plaintiffs deserve an opportunity to respond to these statements and omissions in their Reply as well.

5. In order to adequately respond to Varsity's Response and clarify the record, Plaintiffs seek to file the attached Reply memorandum, including an expert declaration demonstrating their need for the transactional data sought.

For these reasons, Plaintiffs respectfully request leave to file the Reply and supporting documents attached to this Motion. Pursuant to L.R. 7.2(c), Plaintiffs make this timely request within 7 days of service of Varsity's Response.

Dated: May 26, 2021

Respectfully submitted,

By: /s/ Victoria Sims

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CERTIFICATE OF GOOD FAITH

Consistent with Local Rule 26(b)(1) and 7.2(a)(1).01(b)(3), counsel for Plaintiffs, Victoria Sims, sought to confer with counsel for Varsity, Steven Kaiser, on May 25, 2021, via electronic email, inquiring whether Varsity Defendants opposed this Motion. Varsity did not respond, thus Plaintiffs understand that the parties are not in accord.

/s/ Victoria Sims

Victoria Sims

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on May 26, 2021, the foregoing was served via ECF processing upon the following:

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/s/ Victoria Sims

Victoria Sims